APPENDIX A

Opinion Below.

Before Bastian, *Senior Circuit Judge,* Burger and Wright, *Circuit Judges.*

Burger, *Circuit Judge:* These appeals challenge the District Court's dismissal of objections filed by the Brotherhood of Railroad Trainmen (BRT) to Arbitration Board 282's answers of certain questions submitted to it by the BRT.

Little background need be set out since this case is merely the latest manifestation of a litigation syndrome that seems to keep the railroads and various governmental entities in the courts on an ancient issue.[1] It is sufficient here to note that, to head off a threatened national strike in 1963, Congress directed that unresolved issues be submitted to binding arbitration,[2] which was to be conducted pursuant to sections 7, 8, and 9 of the Railway Labor Act;[3] that Arbitration Board 282 made its Award later in that year; and that the portion of the Award here relevant delegated to local Special Boards of Adjustment resolution of disputes over the size and composition of train crews ("crew consist").

The appeal is directed at two questions. The first inquired of Arbitration Board 282 whether a carrier violated the terms of the Award by reducing its crews prior to disposition of the matter by the local Special Board. Board

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[1] The dispute is chronicled in Bhd. of Locomotive Firemen & Enginemen v. Chicago, Burlington & Quincy R. R. Co., 225 F. Supp. 11 (D. D. C.), *aff'd,* 118 U. S. App. D. C. 100, 331 F. 2d 1020, *cert. denied,* 377 U. S. 918 (1964), and in Bhd. of Railroad Trainmen v. Akron & Barberton Belt R. R. Co., No. 20,152, D. C. Cir., May 12, 1967.

[2] Joint Resolution, Public Law 88-108, 77 Stat. 132 (1963).

[3] 44 Stat. 582, 584, 585 (1926), as amended, 45 U. S. C., §§ 157, 158, 159 (1964).

282's Award had remanded the issue of "crew consist" to the local Special Boards with the requirement that "no change shall be made in the scope or application of rules in effect immediately prior to the effective date of this Award, whether established by agreement, interpretation, or practice. . . . " The BRT complains that Board 282 answered its question by finding: "the Award bars changes in the scope or application of 'rules' in effect immediately prior to the effective date of this Award requiring a stipulated number of trainmen, whether such 'rules' were established by agreement, interpretation or practice. Where no such 'rule' was in effect immediately prior to the effective date of the Award, this bar does not apply." There is obviously no difference between the Award and the Board's interpretation of it; but Appellant also argues that the courts had interpreted the Award differently and that this construction was necessary to prevent the Award from failing to resolve the controversy and thus be contrary to the instruction of Congress.

In his opinion affirming the validity of Arbitration Board 282's Award, the District Judge summarized the Board's action by saying "what the Board did was to bar any changes for the time being. . . . "[4] Appellant claims this

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[4] Bhd. of Locomotive Firemen & Enginemen v. Chicago, Burlington & Quincy R. R. Co., *supra* n. 1, 225 F. Supp. at 20. Appellant points also to similar statements by two other judges. In one, the opinion was expressly dealing with a change in a rule or in rule application, and statements that no change could be made were shorthand for "change in rule or in rule application." Chicago, Milwaukee, St. Paul & Pacific R. R. Co. v. Order of Ry. Conductors & Brakemen, 229 F. Supp. 178 (W. D. Wash. 1964). In the other, Judge Miller, sitting as a District Judge, stated that Judge Holtzoff had determined that no changes should be made in "crew consist" and noted that this had been directed only at the issue of the finality of Board 282's disposition; Judge Miller expressly left open the question of the meaning of the Award and directed that Board 282 first decide the question. Certain Carriers, etc. Misc. No. 40-63, D. D. C. Aug. 6, 1965.

forbade any changes irrespective of whether a rule was in existence. This argument is at best disingenuous; read in context it is clear beyond doubt that the District Judge was merely summarizing the Award preparatory to meeting the challenge that it was not a final disposition of the issues and thus violative of the enabling statute. Whether the railroad could make changes if there were no rule or practice in effect was irrelevant to the issue. The District Court decided that the Award adequately disposed of the issues and was valid; his decision was not premised on any particular definition of or comment concerning the Award.

Appellant's second major contention is that the Special Boards of Adjustment, like Arbitration Board 282, were to operate pursuant to the Railway Labor Act; specifically, it urges that they were required to take all evidence under oath and to keep a transcript of their proceedings. Its argument is twofold. It claims first that the statute setting up compulsory arbitration subject to the Railway Labor Act established the same standard for the local Special Boards of Adjustment and secondly that the Arbitration Board erred in interpreting its Award by saying that it did not include this requirement. We need not consider the merits of these claims except to point out that the statutory argument is now precluded as being *res judicata* by virtue of the earlier review of the Award[5] and that our

[5] In the action to impeach the Award, to which the BRT was a party, the unions claimed that the Award did not satisfy the requirements of Public Law 88-108; the District Court held that it did. Bhd. of Locomotive Firemen & Enginemen v. Chicago, Burlington & Quincy R. C. Co., *supra* n. 1. The BRT's identical claim in this litigation, therefore, is determined by considerations of *res judicata*. The fact that it apparently did not urge this particular theory of illegality at the time of its impeachment action is, of course, irrelevant. A party may not litigate one issue and then, upon an unsuccessful disposition, revivify the same cause of action with a new theory. In any case, the BRT must have

review of the Board's answer to the BRT's question with respect to what its Award required is determined by Section 9 of the Railway Labor Act and is therefore quite limited. It is sufficient to note that Appellant will not be heard to make these arguments at this late date.

The Special Boards of Adjustment were convened in the spring of 1964. Appellant refused to participate "on the ground that . . . final judgment of the court had not been entered in the proceeding which had been instituted to impeach the Award of Arbitration Board 282."[6] Although its motive is irrelevant, it is interesting to note that Appellant refused to participate in the proceedings even after the Award had been revised and the Supreme Court had denied it a writ of certiorari.

Having thus purposefully refused to participate, it now complains because the evidence was not taken under oath and transcripts not prepared by the Special Boards. Procedural objections to the action of an administrative agency or trial court must be timely made to give the tribunal an opportunity to correct the error, if error there be; such

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been aware at that time of the theory it now urges. It argued that Board 282 lacked authority to require the parties to bear the expenses of the neutral members on the local Special Boards since the parties had agreed to permit the government to bear the cost; yet it surely must have known that Section 7 Third (e) of the Railway Labor Act requires the government to pay. It was in a position, therefore, to realize that Board 282's Award did not call for the local Special Boards to act pursuant to the Railway Labor Act. There is no basis for the argument that the BRT could assume that the local Special Boards would be conducted in accordance with the Railway Labor Act and that the divergence from that Act was not in the Award but in the later actions of the Special Boards.

[6] It says that its refusal to participate was also based on the railroads' notices being more general than what was permitted by the Award; its record citations, however, do not support this.

contentions cannot first be made on appeal.[7] It is imperative to an efficient and fair administration of justice that a litigant may not withhold his objections, await the outcome, and then complain that he was denied his rights if he does not approve the resulting decision.

But even more than that is involved here. Appellant is not lamenting merely about alleged procedural defects which it should have raised earlier; it is complaining about a lack of certain procedures which were *made irrelevant by its purposeful absence.* The Special Boards of Adjustments were limited, by Appellant's absence, to receiving documentary evidence submitted by the carriers. Since Appellant was not present to challenge the carriers, there was no occasion for a formal hearing in the usual sense; there was, therefore, no one to whom to give an oath and no testimony to transcribe. A party may not allege on appeal as error an action which he had induced the tribunal to take;[8] by boycotting the Special Boards of Adjustment, the Appellant did not merely induce the alleged errors but

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[7] *E.g.*, United States v. Tucker Truck Lines, Inc., 344 U. S. 33, 37 (1952); Bower v. Eastern Airlines, Inc., 214 F. 2d 623, 627 (3d Cir.), *cert. denied*, 348 U. S. 871 (1954); United States v. Five Cases, 179 F. 2d 519, 523 (2d Cir.), *cert. denied*, 339 U. S. 963 (1960). Indeed in our earlier consideration of the question of the applicability of the Railway Labor Act to the Special Boards of Adjustment, when we suggested presenting the problem to Board 282, we noted, "Courts will not lightly view a party's failure to request certain procedural rights, or even refrain from participation only thereafter to await the outcome and then challenge an unfavorable result." Bhd. of R. R. Trainmen v. Certain Carriers, 121 U. S. App. D. C. 230, 232, 349 F. 2d 207, 209 n. 7 (1965).

[8] *E.g.*, Bowman v. Curt G. Joa, Inc., 361 F. 2d 706, 716 (4th Cir. 1966); Cranston Print Works Co. v. Public Service Co., 291 F. 2d 638, 649 (4th Cir. 1961); Livingston v. Shreveport-Texas League Baseball Corp., 128 F. Supp. 191, 203 (W. D. La. 1955), *aff'd*, 228 F. 2d 623 (5th Cir. 1956).

also made them necessary if the disputes were to be settled promptly.

Appellant's arguments that conditions caused by its refusal to participate require reversal of the awards is nothing more than another way of saying that it should have complete veto power over the operation of these public Boards by the simple device of declining participation.

Affirmed.

Wright, *Circuit Judge,* dissents for the reasons stated in his dissenting opinion in Nos. 20212 and 20213, *Brotherhood of Railroad Trainmen* v. *St. Louis Southwestern Railway Company and Ralph T. Seward,* filed today.

APPENDIX "B"

Judgment Below.

Before: Bastian, *Senior Circuit Judge,* and Burger and Wright, *Circuit Judges.*

JUDGMENT.

These cases came on to be heard on the records on appeals from the United States District Court for the District of Columbia, and were argued by counsel.

On Consideration Whereof, it is ordered and adjudged by this court that the order of the District Court appealed from in these cases is hereby affirmed.

Per Circuit Judge Burger.

Dated: May 19, 1967.

Circuit Judge Wright dissents for the reasons stated in his dissenting opinion filed today in Nos. 20,212 and 20,213, *Brotherhood of Railroad Trainmen* v. *St. Louis Southwestern Railway Company and Ralph T. Seward.*

APPENDIX "C"

District Court Opinion Below.

This proceeding is an outgrowth of the arbitration directed by the Congress in respect to issues that brought this country to the brink of a nationwide railroad strike in August, 1963. The Court has before it a petition on the part of a group of railway employees, to impeach what may be called a supplemental award of the special Arbitration Board created by the Congress. This award consists of answers to questions submitted to the Board in respect to the interpretation, application and administration of the principal award of the Board previously rendered.

Originally the two principal issues in dispute between the Brotherhoods, consisting of railroad employees, and the railroads, were first, the status of firemen on freight trains following the shift from steam-powered locomotives to Diesel engines; and, second, the size and composition of train crews, or the "crew consist", in the jargon of the industry, resulting from technological advances. A special Act of Congress (Act of August 28, 1963, Public Law 88-108, 77 Stat. 129) prescribed a compulsory arbitration of these two problems and created a special arbitration board for that purpose. This board was directed to conduct its proceedings in accordance with the provisions of the Railway Labor Act, 45 U.S.C. § 158, which regulate arbitrations of labor controversies in the railroad industry. Its award was made subject to the limited judicial review accorded by the Railway Labor Act.

This special board, after conducting exhaustive hearings and thoroughly considering the evidence, rendered a comprehensive decision disposing of the two issues submitted to it. In an action to impeach the award, brought pursuant to 45 U.S.C. § 159 by some of the Brotherhoods representing railway employees, the decision was sustained by this Court, *Brotherhood of Loc. Fire. & Eng.* v. *Chicago B. & Q.*

R. Co., 225 F. Supp. 11.[1] The judgment of this Court was affirmed by the Court of Appeals for the District of Columbia Circuit, 118 U.S. App. D.C. 100, and certiorari was denied by the Supreme Court, 377 U.S. 918.

The Act of Congress, which created the special Board of Arbitration that became known as Arbitration Board No. 282, required it to follow the procedure prescribed generally for arbitration boards created under the Railway Labor Act, as defined in 45 U.S.C. § 158. Paragraph (m) of that Section provides that any differences arising as to the meaning or the application of any provision of an award, shall be referred back to the Board for a ruling. Accordingly, Arbitration Board 282 has reconvened from time to time to interpret and construe its award in connection with specific questions that have arisen in the course of its application and administration.

The basic award of Board No. 282 made on November 26, 1963, may be divided into two parts. One dealt with the status of firemen on Diesel engines on freight trains. This subject is not before the Court at this time. The other aspect of the award was devoted to the size and composition of train crews, i.e., "crew consist" in the parlance of the industry. This problem had numberless ramifications, since situations vary from train to train and might run into thousands. Manifestly, it would not have been practicable for the Board, especially in the short time at its disposal, to determine the size and composition of the train crew on every train throughout the country. Moreover, the nature of the problem was such as to require flexibility for alterations that may be necessitated by changes in conditions on any specific run from time to time. The Board solved the problem by formulating a series of concrete principles to govern the determination of "crew consist"

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[1] The opinion of this Court cited in the text summarizes the history of the controversy and the provisions of the award in some detail.

in individual instances. It provided that proposals for changes in existing written or oral rules should be initiated by notices and handled by negotiations. If no agreement was reached, the matter was to be referred to a special board of adjustment to be selected and convened as prescribed in detail in the award. As heretofore stated, in the action brought to impeach it, the award was sustained by this Court in every respect and the judgment of this Court was affirmed by the Court of Appeals.

Pursuant to the award, such special boards of adjustment were later created for the purpose of solving individual controversies involving the size and composition of crews on individual trains on various railroads. From time to time Board No. 282 was reconvened and rendered supplemental rulings governing activities of these special boards.

The matter now before the Court is an attempt by certain of the Brotherhoods to impeach or set aside several answers of the Board to questions submitted to it by the parties. The present proceeding is brought under 45 U.S.C. § 159, which accords a limited judicial review of an award of an Arbitration Board created under the Railway Labor Act. It has been instituted by a petition filed both in the action that had been originally brought to impeach the basic award, and in a new separate action filed to attack the supplemental award consisting of the answers to which we have just referred. The two petitions, which are practically identical, have been consolidated for a hearing.

The scope of judicial review of an arbitration award under the Railway Labor Act is narrowly limited and restricted. It extends solely to the following matters: failure of the award to conform to the substantive requirements prescribed by the Act; failure of the proceedings to conform to the provisions of the Act; failure of the award to conform or confine itself to the stipulations of the agreement to arbitrate; and, fraud or corruption of a member of the Board or of a party to the arbitration, 45 U.S.C. § 159,

paragraph Third. Unlike reviews of decisions of administrative agencies generally, the Court is not vested with any authority to examine the evidence, or to determine whether the findings of the Arbitration Board are sustained by substantial evidence. The Arbitration Board is thus clothed with plenary and final power to determine the controversy provided it adheres to the requirements of law to which reference has just been made. It may perhaps be assumed, without deciding that the Court might possibly be empowered to set aside a ruling or interpretation of the Board that is so unreasonable on its face as to be adjudged arbitrary or capricious. This question, however, does not arise in this proceeding.

The supplemental award now questioned was rendered by Arbitration Board No. 282, on October 10, 1965, and consists of answers to specific questions submitted by parties to the arbitration in regard to the construction and application of the award. The answers in controversy are in response to Questions No. 32, 33 and 36, which relate to the activities of special boards of adjustment created pursuant to the direction of Board No. 282, for the purpose of determining individual disputes as to the composition and size of train crews in specific instances.

A preliminary statement contained in the present award of the Board pointedly summarizes and comments on the issues in controversy, as follows (pp. 10, 11, 12 and 13):

> "The organizations affected by the Award argue that these special boards of adjustment are bound by the rules applicable to the statutory arbitration boards provided for in Section 7 of the Railway Labor Act. We reject that contention as completely erroneous. Section 7 First of the Act provides for a board of either three or six persons; our Award stipulates a board of three. Section 7 Third (f) requires that the arbitration board shall furnish a certified copy of its award to the respective parties to the controversy, and

shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified by at least a majority of the board, to the clerk of the federal district court for the district in which the controversy arose, and that certified copies shall also be filed with the National Mediation Board and the Interstate Commerce Commission. Our Award imposes no such requirements. Thus, the logic of the organizations' argument forces them to concede that an award rendered by a special board of adjustment pursuant to the procedures and guidelines laid down in Award 282, which has been accepted by the parties and put into effect, can nevertheless be voided by either party at some future date because certified copies of the record were not filed with the court, the Mediation Board, and the Commission. We think such a conclusion is plainly contrary to the letter and the spirit of award 282. (pp. 10-11)

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"It is true that Section 4 of Public Law 88-108, which established Board 282, states that 'To the extent not inconsistent with this joint resolution the arbitration shall be conducted pursuant to sections 7 and 8 of the Railway Labor Act, the board's award shall be made and filed as provided in said sections and shall be subject to section 9 of the said Act.' We think it clear that the quoted language applies only to Board 282 and not to the special boards of adjustment provided for in its Award. (p. 12)

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"We do affirm, . . . that it was never our intention that the special boards of adjustment for which we provided would be subject to Sections 7 and 8 of the Railway Labor Act." (p. 13)

We now take up the individual questions in controversy. Question 32(c) enquires whether the awards of the special

boards of adjustment were void because (1) the notices served by the carrier were defective; and (2) the carriers did not negotiate with the Brotherhood in good faith, as required by the original direction of Board No. 282. The Board answered that the notices were not defective, except for a closing phrase which makes them applicable to assignments that might be thereafter established. The Board holds that this phrase, which refers to non-existing assignments, should not have been adopted by the special boards of adjustment, and that this provision is void, but does not vitiate the remainder of the award.

It was argued by counsel that the Board erred as a matter of law in that the Railway Labor Act, 45 U.S.C. § 159, paragraph Fourth, provided that if a part of the award is held invalid, the entire award should be set aside. This point is lacking in merit. Section 159 applies solely to the award of the statutory Board of Arbitration. The awards here in question were made by the special boards of adjustment locally created pursuant to the provisions of the original award. These special boards are not within the scope of the Railway Labor Act.

This Court has already held that the provisions of the Railway Labor Act are not applicable to the special boards of adjustment. It was stated by this Court *In re Certain Carriers, etc.*, 231 F. Supp. 519, 521:

> "It is then claimed that the boards did not follow the prescribed procedure, and that, therefore, the awards should be set aside. This contention is predicated on the major premise that the provisions of the Railway Labor Act governing the procedure of an arbitration board are applicable to these local adjustment boards. To be sure, the provisions of the Railway Labor Act, found in 45 U.S.C. §§ 158, 159, were binding on the special Board of Arbitration created by the Act of Congress, and those provisions were complied with. The Court is of the opinion, however,

that they are not applicable to the special boards of adjustment created under the award.

"These special boards are creatures of the Arbitration Board and not of any statute."

As to the second part of this question, Board No. 282 stated:

"On the basis of the record before it, the Board finds no evidence that the carrier failed to negotiate in a manner consistent with the intent of the Award of Board 282."

Question 32(d) enquires whether an award of a special board of adjustment relating to assignments of baggagemen is null and void on the theory that the special board has no jurisdiction over baggagemen on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, because they were governed by a separate agreement rather than by the "crew consist" rule. The Board replied that the special board of adjustment had jurisdiction over these assignments, because they were covered by a rule established by an agreement within the meaning of the original award. Section III, part A(2) of the basic award, which relates to changes in rules requiring the use of a stipulated number of trainmen, specifically enumerates the categories of trainmen that are covered, to wit, assistant conductors, ticket takers, *baggagemen,* brakemen, or firemen. (Emphasis supplied.)

Question 33 enquires whether the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the provisions of the original award of Board No. 282, by reducing the size of crews on certain trains, without following the prescribed procedure. The Board ruled in effect that the procedure established by the Board for attempts to change the size of a crew, was by its very terms applicable to situations in which there were rules fixing the size of

the crew in effect on the effective date of the award, irrespective of whether such rules were established by agreement, interpretation, or practice. The procedure was not applicable in case there was no existing rule. The Board further held that if there was a dispute whether a rule existed immediately prior to the effective date of the award, an issue of fact was created to be determined under the existing procedure provided by the Railway Labor Act for the settlement of "minor" disputes, i.e., by the National Railroad Adjustment Board, created under 45 U.S.C. § 153.

Question 36(a) enquires whether certain notices of proposed changes in the size and composition of train crews were served prematurely, and, second, whether they were defective on the theory that they were too broad. Board No. 282 answered each of these questions in the negative. On the oral argument before this Court, objections to the first part of the answer were abandoned. The objection to the form of the notices was, in effect, that the notices covered groups of runs, rather than specific runs. The Board held these notices to be proper and this Court had previously reached the same conclusion, *In re Certain Carriers, etc.*, 231 F. Supp. 519, 521.

Questions 36(b) and (c) renewed in a different form the objections to the procedure followed by the local boards, which has been already discussed.

Question 36(d) enquires whether there was substantial evidence to support the awards of each of the special boards of adjustment and whether each of the awards confines itself and conforms to the guidelines of the basic award of Board No. 282. The answer of the Board is as follows:

> "The essential criterion is not whether there is substantial evidence to support the awards of the special boards of adjustment but rather whether there is substantial evidence to show that the special boards of

adjustment failed to apply or to confine themselves to the guidelines prescribed by the Award of Board 282. On the basis of the record before it, the Board finds no evidence that the special boards failed to comply with the requirements of the Award."

It must be borne in mind that this Court may not review the question whether there was substantial evidence to support the awards of the individual special boards, nor may Board No. 282 do so. The scope of judicial review under the Railway Labor Act is much narrower than that in respect to decisions of administrative agencies generally, as has already been shown.

The principal attack on the decisions of the special boards of adjustment, is that the proceedings conducted by these tribunals were informal and that no stenographic record was made of the testimony. The United States was, without objection, permitted to intervene in the present action. Counsel for the Government at the oral argument informed the Court that practically all of these boards proceeded in the same manner and that no stenographic records were kept by most if not all of them. He called attention to the fact that at this late date if this mode of procedure were held to be in violation of law, it would be necessary to set aside and vacate all of the rulings of the special boards and to require them to conduct new hearings. The result would be delay and expense with possible detriment to both sides of the controversy. It does not appear that the Brotherhoods either requested the boards to proceed in any other manner, or that they moved that a stenographic record be kept of the testimony. It is not unlikely that if such a request had been made at the beginning, it might well have been complied with. It is not appropriate for them to raise the objection at this late date after remaining silent while the special boards were in operation.

The question before this Court, is, of course, not what this Court would have held in each individual instance on

a trial *de novo*. It is merely whether Board No. 282 exceeded its power, committed some error of law, or acted arbitrarily or capriciously. No basis is perceived for setting aside the rulings of the Board. This Court is of the opinion that the decisions of Board No. 282 involved in this proceeding, were entirely valid and proper and should be sustained.

The petition to impeach the award consisting of the answers to questions here in issue, is dismissed.

ALEXANDER HOLTZOFF
United States District Judge.

January 12, 1966.

APPENDIX "D"

Question No. 33 and Answer of Board 282 to Question No. 33.

B.R.T. Question No. 33:

Did the Chicago, Milwaukee, St. Paul & Pacific Railroad Company (Line East) violate the provisions of Award #282 by reducing the crew consist of a conductor and two brakemen to a conductor and one brakeman:

(a) On certain main line freight trains,

(b) On certain branch line freight trains, and

(c) On certain main line passenger trains,

without complying with Article III of the Award rendered by Arbitration Board 282, made pursuant to Public Law 88-108, 88th Congress S.J. Res. 102, enacted August 28, 1963.

Answer:

Section III, Part A(2) of the Award bars changes in the scope or application of "rules" in effect immediately prior

to the effective date of this Award requiring a stipulated number of trainmen, whether such "rules" were established by agreement, interpretation or practice. Where no such "rule was in effect immediately prior to the effective date of the Award, this bar does not apply. The Board does not construe the statement by Judge Miller, relied on by the Brotherhood, as a holding to the contrary. Judge Miller said, referring to an earlier opinion by Judge Holtzoff, that "it has been judicially determined that the language . . . [of] Subsection A(2) of Section III of the Award means that no change shall be made for the time being in the composition of any train crew except through the procedures set up in the Award." This construction is applicable only to situations in which there were rules in effect immediately prior to the effective date of the Award which required a stipulated number of trainmen. As the Board indicated in its answer to B.R.T. Question 18, the question of whether such a rule was or was not in effect immediately prior the effective date of the Award raises an issue of fact to be determined under existing procedures of the Railway Labor Act for the settlement of "minor" disputes. The Board notes the willingness of the Carrier to expedite the determination of this issue of fact in the present case.

APPENDIX "E"

Public Law 88-108, 77 Stat. 132

"Sec. 1. That no carrier which served the notices of November 2, 1959, and no labor organization which received such notices or served the labor organization notices of September 7, 1960, shall make any change except by agreement, or pursuant to an arbitration award as hereinafter provided, in rates of pay, rules, or working conditions encompassed by any of such notices, or engage in any strike or lockout over and dispute arising from any of such notices. Any action heretofore taken which would be prohibited by

the foregoing sentence shall be forthwith rescinded and the status existing immediately prior to such action restored.

"Sec. 2. There is hereby established an arbitration board to consist of seven members. The representatives of the carrier and organization parties to the aforesaid dispute are hereby directed, respectively, within five days after the enactment hereof [Aug. 28, 1963] each to name two persons to serve as members of such arbitration board. The four members thus chosen shall select three additional members. The seven members shall then elect a chairman. If the members chosen by the parties shall fail to name one or more of the additional three members within ten days, such additional members shall be named by the President. If either party fails to name a member or members to the arbitration board within the five days provided, the President shall name such member or members in lieu of such party and shall also name the additional three members necessary to constitute a board of seven members, all within ten days after the date of enactment of this joint resolution [Aug. 28, 1963]. Notwithstanding any other provision of law, the National Mediation Board is authorized and directed: (1) to compensate the arbitrators not named by the parties at a rate not in excess of $100 for each day together with necessary travel and subsistence expenses, and (2) to provide such services and facilities as may be necessary and appropriate in carrying out the purposes of this joint resolution.

"Sec. 3. Promptly upon the completion of the naming of the arbitration board the Secretary of Labor shall furnish to the board and to the parties to the dispute copies of his statement to the parties of August 2, 1963, and the papers therewith submitted to the parties, together with memorandums and such other data as the board may request setting forth the matters with respect to which

the parties were in tentative agreement and the extent of disagreement with respect to matters on which the parties were not in tentative agreement. The arbitration board shall make a decision, pursuant to the procedures hereinafter set forth, as to what disposition shall be made of those portions of the carriers' notices of November 2, 1959, identified as 'Use of Firemen (Helpers) on Other Than Steam Power' and 'Consist of Road and Yard Crews' and that portion of the organizations' notices of September 7, 1960, identified as 'Minimum Safe Crew Consist' and implementing proposals pertaining thereto. The arbitration board shall incorporate in such decision any matters on which it finds the parties were in agreement, shall resolve the matters on which the parties were not in agreement, and shall, in making its award, give due consideration to those matters on which the parties were in tentative agreement. Such award shall be binding on both the carrier and organization parties to the dispute and shall constitute a complete and final disposition of the aforesaid issues covered by the decision of the board of arbitration.

"Sec. 4. To the extent not inconsistent with this joint resolution the arbitration shall be conducted pursuant to sections 7 and 8 of the Railway Labor Act [this section and section 158 of this title], the board's award shall be made and filed as provided in said sections and shall be subject to section 9 of said Act [section 159 of this title]. The United States District Court for the District of Columbia is hereby designated as the court in which the award is to be filed, and the arbitration board shall report to the National Mediation Board in the same manner as arbitration boards functioning pursuant to the Railway Labor Act. The award shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed two years from the date the award takes effect, unless the parties agree otherwise.

"Sec. 5. The arbitration board shall begin its hearings thirty days after the enactment of this joint resolution or on such earlier date as the parties to the dispute and the board may agree upon and shall make and file its award not later than ninety days after the enactment of this joint resolution: *Provided, however,* That said award shall not become effective until sixty days after the filing of the award.

"Sec. 6. The parties to the disputes arising from the aforesaid notices shall immediately resume collective bargaining with respect to all issues raised in the notices of November 2, 1959, and September 7, 1960, not to be disposed of by arbitration under section 3 of this joint resolution and shall exert every reasonable effort to resolve such issues by agreement. The Secretary of Labor and the National Mediation Board are hereby directed to give all reasonable assistance to the parties and to engage in mediatory action directed toward promoting such agreement.

"Sec. 7.

"(a) In making any award under this joint resolution the arbitration board established under section 2 shall give due consideration to the effect of the proposed award upon adequate and safe transportation service to the public and upon the interests of the carrier and employees affected, giving due consideration to the narrowing of the areas of disagreement which has been accomplished in bargaining and mediation.

"(b) The obligations imposed by this joint resolution, upon suit by the Attorney General, shall be enforcible through such orders as may be necessary by any court of the United States having jurisdiction of any of the parties.

"Sec. 8. This joint resolution shall expire one hundred and eighty days after the date of its enactment [Aug. 28,

1963], except that it shall remain in effect with respect to the last sentence of section 4 for the period prescribed in that sentence.

"Sec. 9. If any provision of this joint resolution or the application thereof is held invalid, the remainder of this joint resolution and the application of such provision to other parties or in other circumstances not held invalid shall not be affected thereby."